

DEPARTMENT OF STATE REVENUE

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**Letter of Findings Number: 06-0121P
Withholding Tax
For the Months of July and August 2005**

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: [IC 6-8.1-10-2.1](#)(d); [45 IAC 15-11-2](#);

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of monthly withholding tax returns for the months of July and August 2005. The taxpayer is an Indiana company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the pre-printed withholding coupons were not timely received.

The Department's mailing of documents is controlled by [IC 6-8.1-3-11](#). The statute states the Department fulfills its mailing of documents by mailing the documents by first class mail. This situation is supported by *Holmes v. Randolph*, 610 N.E. 2d 839 (Ind 1993).

With regard to the instant case, the Department's records show the pre-printed coupons were timely mailed by first class mail. Therefore, the mailing is considered statutorily correct.

To continue, if the taxpayer did not have the pre-printed forms, the taxpayer could have filed the withholding payment on the taxpayer's letterhead.

The regulation which controls the application of penalty is [45 IAC 15-11-2](#)(b) which states, Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

Posted: 08/02/2006 by Legislative Services Agency

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